



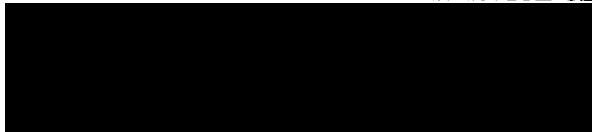
U.S. Citizenship
and Immigration
Services

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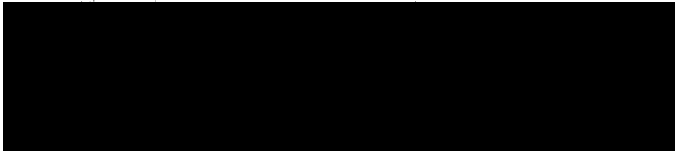
FILE: WAC 02 173 52409 Office: CALIFORNIA SERVICE CENTER Date: **OCT 25 2004**

IN RE: Petitioner:
Beneficiary:



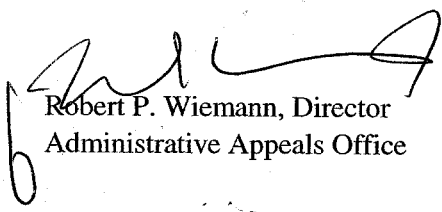
PETITION: Immigrant Petition for Alien Worker as a Multinational Executive or Manager Pursuant to
Section 203(b)(1)(C) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(C)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to
the office that originally decided your case. Any further inquiry must be made to that office.


Robert P. Wiemann, Director
Administrative Appeals Office

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

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DISCUSSION: The director denied the employment-based preference petition and the Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is again before the AAO on a motion to reopen. The motion will be dismissed as untimely filed.

The petitioner is a California company that claims to import and export petroleum-related goods. It seeks to employ the beneficiary as its president/chief executive officer and, therefore, endeavors to classify the beneficiary as a multinational executive or manager pursuant to section 203(b)(1)(C) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(C).

The director denied the petition because the proffered position is not in a managerial or executive capacity, and the petitioner had not been doing business as that term is defined in the regulations. On appeal, the AAO overturned the director's conclusions regarding the petitioner's business operations, finding that the petitioner had been doing business. The AAO, however, concurred with the director that the beneficiary would not be employed in a managerial or executive capacity.

On motion, counsel submits a brief and additional evidence.

An affected party has 30 days from the date of an adverse decision to file a motion to reopen or reconsider a proceeding before Citizenship and Immigration Services (CIS). 8 C.F.R. § 103.5(a)(1)(i). If the adverse decision was served by mail, an additional three-day period is added to the prescribed period. 8 C.F.R. § 103.5a(b). Any motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4).

The petitioner's motion does not meet applicable requirements because it was not timely filed. The AAO mailed its decision to the petitioner and counsel on August 29, 2003. CIS received the petitioner's motion 59 days later on October 27, 2003. Neither counsel nor the petitioner presents any evidence for the AAO to consider regarding the delay in timely filing the motion. 8 C.F.R. § 103.5(a)(1)(i). Accordingly, the motion will be dismissed.

As always, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met that burden.

ORDER: The motion is dismissed. The previous decision of the AAO, dated August 29, 2003, is affirmed. The petition is denied.